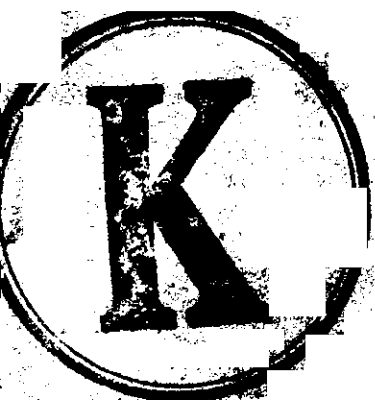




1952

File No. O. Kerosene

Legal Deptt.

oil / 52.

81-52

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BRANCH

Subject:— Opinion on the

~~2-10~~

Kerosene Oil Licensing
order

File No. O Kerosene Oil / 52

Gen. 194 e.

G. 81-52

Sr.No.	R.I./O.No.	Subject	Pages.
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Opinions on the ~~Kerosene~~ Oil

Licensing Order.

1. G- 470
22-9-52.

Question (#) whether Shri Aidaali could be held liable for engaging himself in an undertaking which involved sale and storage for sale of kerosene oil without a licence issued in that behalf by the D.U., ~~West~~ Khandesh or any officer authorised by him in contravention of Cl. 2 of the Khandesh Kerosene oil Licensing Order, 1949 and (2, whether a prosecution ^{can be} ~~can be~~ against him for a breach of condition 7 of the licence

1-2

2. G- 713
25-12-52.

Question whether the proposal of the D.U. to take deposits of Rs. 100/- from each of the dealers and then to issue orders in supersession ~~of~~ his previous Orders forfeiting the amount by way of departmental punishment is legally feasible.

3-10.

It appears that a licence for the sale and storage of kerosene oil was granted to Messrs. Yusufali Karimji Kadiyani of Shahada for carrying on business at Shahada on 30th April 1949. Further it appears that the firm of Messrs. Yusufali Karimji Kadiyani consisted of 3 partners, namely :-

- (1) Yusufali Karimji
- (2) Fida Hussain Yusufali; and
- (3) Abdul Hussain Yusufali.

After the death of Shri Yusufali Karimji who was the father of Fidaali Yusufali the partnership was not dissolved but all the other brothers of Fidaali were included as partners in the said firm. As the licence was given in the name of the firm and not in the name of Shri Yusufali in his personal capacity. Shri Fidaali was within his power in operating the licence in the name of the firm. It is true that Fidaali had changed the name of his shop to Bharat General Stores but he has stated that the kerosene business was being done in the name of the firm Messrs. Yusufali Karimji Kadiyani. From the partnership deed at p. 49 of the case papers it is evident that the name of the firm Messrs. Yusufali Karimji was changed to Messrs. Yusufali, the father took his two sons as partners. Even though the licence is mentioned to have been issued to Messrs. Yusufali Karimji it is this firm which is Messrs. Yusufali Karimji and Sons that has been granted this licence and Fidaali is operating the said licence and doing business in the name of the firm as stated above. Therefore, no prosecution under clause 2 of the West Khandesh Kerosene Oil Licensing Order would lie

would lie against him for doing his business at Shahada under the licence in the name of Messrs. Yusufali Karimji Kadiyani.

2: The next question is whether a prosecution can lie against him for a breach of condition 7 of the licence. Condition 7 of the licence provides that the licensee shall maintain a register showing every sale to permit holders, the quantity sold, price recovered and the name and address of such purchaser. The Mamlatdar of Shahada acted on the 7 July 1951 that Shri Fidaali ^{Yusufali} who was dealing in kerosene oil has not maintained a register as required by condition 7 of the licence. His report to the District Magistrate in this respect is at pp. 1-2 of the case papers. It does not appear that he has made any Panchama on that date regarding the non-production or non-maintenance^{of} of the register showing the particulars of every sale. The only document he has produced is a statement by the Fidaali Yusufali, dated the 10th July 1951 (vide p. 7 of the case papers) to the effect that he has not passed any receipts and that he has not kept the register of daily sales. The manner which excites suspicion. Moreover in his further statement at pp. 113-115 of the case papers Shri Fidaali has stated that he had produced such register before the Mamlatdar that the Mamlatdar initialled everything but he does not know why this particular receipt book was not initialled by him. From this it is evident that he has now with him such a cash memo book or register and it will be his defence that on that day there was such a register but the Mamlatdar, for reasons of his own, has not initialled it. In the absence of

of any Panchanama made by the Mamlatdar therefore, the only evidence in support of the prosecution case would be that of the Mamlatdar and the circumstance that the register or receipt book does not bear the Mamlatdar's initials which the other documents bear which were produced before the Mamlatdar on 7 July 1951. The Statement of the accused is open to the objection of being inadmissible in evidence. Besides that statement will not have much value for the prosecution in the absence of a panchanama. It is therefore very doubtful whether a prosecution would succeed in this case.

Remembrancer of Legal Affairs.

U.R. to C.S.D. No. G- 470, dated the 22nd Sept.,
1952.

SSM / 24/7/56.

Condition 10 of the licence for sale or storage of kerosene in retail issue under the Broach Kerosene Licensing Order, 1949 provides that the licensee shall furnish a security of Rs. 50/- only to the Licensing Authority which shall be liable to forfeiture either in full or in part for any breach of any of the conditions of the licence or for breach of any direction that may be given to him from time to time by the Licensing Authority. Under instructions from Government a deposit was not taken from all the dealers and it would not be possible now to discriminate and take a deposit from these two dealers only. Besides only a deposit of Rs. 50/- could have been taken if at all and not Rs. 100/-. The proposal is therefore not legally feasible.

The press announcement was no doubt capable of being misunderstood and the breach is purely technical. Besides the Broach Kerosene Licensing Order, 1949 has been since cancelled.

Remembrancer of Legal Affairs.

U.R. to C.S.D., No. G- 713, dated the 26th
December 1952.

SSM / 24/7/56.